

REPORT

FROM

THE SECRETARY OF WAR,

IN COMPLIANCE WITH

A resolution of the Senate of January 6, 1846, relative to the mineral regions of Lake Superior.

FEBRUARY 24, 1846.

Referred to the Committee on Public Lands, and ordered to be printed.

WAR DEPARTMENT,
February 23, 1846.

SIR: In compliance with the resolution of the Senate passed January 6, directing the Secretary of War to "communicate to the Senate such information relating to the mineral regions of Lake Superior as may remain in the Department of War; the nature and extent of the control exercised by the Secretary of War or the department in relation to the same; the number and character of the permits and leases supposed to have been issued to occupiers of, or applicants for, any of such mineral lands; together with the number of applications for such permits, &c., which have been denied;—and that he report, also, to the Senate a statement of such inconveniences or defects as may have been practically experienced in the management of said lands; together with his opinion of the best mode, by legislation or otherwise, of obviating the defects of the present system," I have the honor to submit the following report:

For the details of the operations of this department in regard to the mineral lands about Lake Superior, I take the liberty to refer the Senate to the report of the Ordnance Bureau, hereunto annexed, marked A. That document will furnish all the information, in this department, required by several clauses in the resolution.

I also herewith communicate the report made to the Secretary of War by Messrs. Tod and Bartlit, agents, who have recently visited the mineral regions of Lake Superior, with instructions to report upon the situation and mineral resources of these regions, &c.; (see annexed document, marked B.) To this document I would respectfully refer, as furnishing much valuable information on several of the points of inquiry embraced in the Senate's resolution.

The mineral region of Lake Superior has, within the two or three past years, risen into great importance in public estimation. Though I do not doubt that extravagant estimates are entertained of its abounding resources, yet I am fully persuaded that it is a most valuable district of

country—a public domain, which, under proper management, may become a prolific source of income to the treasury of the United States.

Though the mineral lands are, in my judgment, a subject eminently worthy of the attention of Congress, they have hitherto scarcely received its glancing notice. There are to be found only two or three clauses in the enactments of Congress referring to the management of them, and these appear to have been incidentally introduced into acts having for their scope and object other matters. In the act (passed March 3, 1807) making provision for the disposal of the public lands situated between the United States military tract and the Connecticut reserve, and for other purposes, there is a clause simply giving to the President the authority to lease the lead mines in the then Indiana territory for a term not exceeding five years. There is no detail whatsoever as to the manner in which this authority is to be executed. In another act, passed on the same day, there is an expression in a provision to one of its sections which is believed to vest in the President the like power in relation to lands ceded to the United States by a foreign nation. The meaning and effect of this expression has been a matter of much disputation, and I am not aware that it has yet been authoritatively settled. The right of the Executive to lease lead mines which were not in the Indiana Territory on the 3d of March, 1807, is still questioned. On the 4th of September, 1841, an act was passed by Congress, in which it is declared that no lands on which are situated any known salines or mines shall be liable to entry.

These few slight, and, as it were, incidental enactments, are all that are to be found bearing on this subject—a subject which deserves no longer to be regarded as among those of minor importance. The present system of leasing the mineral lands, or rather practice, (for it can scarcely be said to have ripened into a system,) is certainly objectionable. It might be somewhat improved, even under existing laws; but a proper system could not be adopted without aid from Congress; and it has been confidently believed that the growing importance of the subject would insure that aid. So far as leasing has been applied to other mineral lands than those containing lead, it is believed to be without authority—certainly without the express direction of Congress.

When the Lake Superior region was first put under the supervision of a United States mineral agent, it was supposed to contain lead ore. As information has increased in relation to this district, doubts have strengthened on this point. It is now quite certain that public attention, which has flowed so strongly in that direction, was not attracted thither by lead; but it was principally copper, and perhaps the hope of finding there a still richer metal, which has been the inducement of individuals to desire leases for tracts in this region. It will be perceived by the annexed report of Messrs. Tod and Bartlit, that these gentlemen entertain a confident opinion that there is no lead in the mineral country about Lake Superior. Should this turn out to be the fact, or even should lead be found there in such inconsiderable quantities as to make it a mere incident to copper mining, the authority to grant leases for locations in that region may well be questioned, the validity of these leases be denied, and consequences, not yet foreseen, may arise to embarrass the operations of the government in regard to this valuable portion of the public property; but, assuming that the right to lease exists, it is proper, indeed almost indispensably necessary, that it should be changed or modified as to the man-

ner of doing it. As it is now conducted, it will lead to great confusion; indeed, such is now the case. Locations reduced, as they have been, from nine square miles to one, are deemed to be of exceedingly great value, and controversies concerning them of corresponding importance, in the view of the parties concerned. It is not unusual for those interested in contested locations to value them as high as a hundred thousand dollars. Sales of shares of interest in those which are uncontested, and for which leases have been granted, are represented to have been made at something like this extravagant rate. This high price, vastly overestimated as it may be, is acquired by merely obtaining a permit, granted by the government without consideration in the first instance, and making a fortunate location under it. This state of things has led, as I do not doubt, many to adventure in this business for the purpose of speculation, without having intended to become interested in the mining business.

There was no public survey of any part of this mineral district until 1845. Each party has made his own survey, and it has, in many instances, been done without much knowledge of the country. Though, when made and approved by the agent, these locations were believed to be sufficiently accurate, it has been subsequently discovered that they often interfere with each other. Many questions of dispute as to boundaries, priority of discovery of mineral indications, &c., are now depending before this department, and by the parties concerned are believed to involve great interests. The department has not the time nor the means of acquiring the requisite information to enable it to come to a conclusion satisfactory to itself upon these sharply contested questions. I do not know that I can better illustrate the difficulties which I wish to present, than to submit a statement of a single pending case, made out and put into my hands by Messrs. Tod and Bartlit; (see document marked C.) If these cases were few in number, or of inconsiderable interest to the parties, the department might dispose of them; but they are already quite numerous, as well as highly important, and are daily multiplying. Equitable questions of a complicated character as to the facts, with much conflicting testimony, are also pending before the department. I have briefly alluded to this state of things for two purposes. First, to show that a system of disposing of these lands, which has led to these difficulties, may readily be believed to be defective, and ought therefore to be changed or modified; and, second, to enforce the recommendation to authorize the establishment of a board or commission to determine and finally settle all these matters of dispute, clothed with authority to call the parties before them, to command the attendance of witnesses, administer to them an obligatory oath, and compel the production of papers, &c. Such a tribunal is indispensably necessary, whether the present system is continued or changed.

As to the supervision over these lands, and where it can be most appropriately placed, I have no distinct opinion to offer. The mineral lands were formerly committed to the Land Office, but were transferred to the War Department by order of the President of the United States, as will be perceived by the following letter of the Secretary of the Treasury:

“TREASURY DEPARTMENT, November 29, 1821.

“SIR: The superintendence of the lead mines of the United States, heretofore exercised by the Secretary of the Treasury, under the expecta-

tion that they might be rendered a productive source of revenue, has been found in practice to be extremely inconvenient, and the product of the mines has added nothing to the revenue, from the want of officers residing in their vicinity to receive the rent which might from time to time become due. I have, therefore, suggested to the President of the United States the propriety of transferring the superintendence of them to the Secretary of War, who, through the agency of the Ordnance Department, may render them productive; and he has instructed me to inform you that the superintendence is accordingly transferred to the Secretary of that department. I have requested the Commissioner of the General Land Office to communicate such documents as may be in his possession, which may be useful to you in the discharge of the duty which devolves upon you by this decision of the President.

"I am, with much respect, &c.,"

"WM. H. CRAWFORD.

"Hon. JOHN C. CALHOUN,

"Secretary of War."

They were then, and for some time after, of no great importance, nor was the labor of supervision very troublesome. In the distribution of business at this office, they were assigned to the Ordnance Bureau. This branch of business has increased in magnitude, and become eminently worthy of being regarded as a matter of great public concernment. The labor of conducting it is considerable, and will increase. It now presses heavily on that bureau, and interferes with its appropriate military duties, which are at all times arduous, and particularly so at this time. I do not think it of much importance as to which of the departments of the government the supervision of the mineral lands is given; but it is my decided opinion that it would be unfortunate to make the management of these lands an incident to any subordinate branch of either department. Unless it should be the policy of Congress to transfer this vast amount of national wealth to individuals without adequate consideration—a policy which I should deem exceedingly unwise—this branch of public business, now important as a public concern and rapidly increasing, requires the organization of a separate bureau, or to be put in charge of one whose only or main business should be to conduct it.

I doubt if any country, having great wealth as a part of its public domain, has ever surrendered it to individuals without adequate consideration; and I confess that I do not feel the force of the reasons which are urged in favor of such a measure in regard to our rich mineral lands, particularly the copper lands about Lake Superior. The policy of selling them has met with very general approval. It is undoubtedly preferable to the present mode of leasing to whoever may desire it; but it is generally understood, that, previous to sale, the extent of the mineral wealth which the lands contain is to be ascertained and regarded in the consideration to be paid to the government. Could this end be obtained, no one could doubt that the disposal of them by absolute sale would be the best course to be pursued. But there is one difficulty in this mode of disposing of them which has, upon reflection, presented itself to my mind, of a formidable character. The value of the mineral lands cannot generally be ascertained until after exploration. It might be the case—indeed, I think it often would be—that land, barren as to soil, and offering no

decided indications of mineral riches, would, nevertheless, contain some of the best veins of ore in the whole region, and if sold before this fact was disclosed, the government would receive but an inadequate consideration. This difficulty would be avoided, the interest of the government secured, and the purchaser justly dealt with and fairly encouraged, by an absolute sale of the land, with the sole right to mine upon it; subject, however, to a reservation, by the government, of a fair proportion of the products of the mines which the purchaser might see fit to work, to be ascertained on a principle which would graduate this proportion with reference to the labor of procuring the metal, and the richness of the deposit. This qualification to the sale of lands, reserving to the government a fair share of its mineral products, might be deemed objectionable on account of the difficulty of ascertaining what its share ought to be, and securing the faithful payment of it. This difficulty is not so serious as to induce the government to abandon all idea of availing itself of the advantages it can and should derive from its undoubted property. There are difficulties in deriving a revenue from any source whatever, yet they are overcome by a proper course of legislation; and so, undoubtedly, they might be in regard to these lands; so they have been in other countries which happen to possess rich mineral lands.

The State of New York has already received several millions of income from its salines, and it has experienced no serious inconvenience in so managing them as to secure a large annual amount of revenue. I cannot conceive that it would be much more difficult to manage mines than salt springs, and to insure to the government a fair profit from them.

I am fully persuaded that these lands may be made a fruitful source of revenue, and I do not see or anticipate obstructions or embarrassments which should deter the government from attempting to make them a source of income to the national treasury. It would be a most unexceptionable mode of supplying, to some extent at least, the pecuniary wants of the government; it would not be taking labor, or the property of the citizen, earned by his labor, but it would be drawing an income from the bounty of nature; for, in carrying out this system, care might and should be taken that the labor of mining should be liberally rewarded. What the government would receive would be but a part of what it owns, and the miners would be rewarded, and well rewarded, by the far greater part reserved to themselves for making the government's share available.

It is probable that the results of the past experiments to derive an income from the lead mines will be appealed to, for the purpose of justifying the policy of selling these lands, without reserving to the government any interest or share in the minerals which may be derived from them. When this past experience is well understood, this argument will not or should not have much force.

In regard to the lead regions there has been defective legislation, and the government has been deprived of its just rights by frauds, and resistance to its fair claims. I could refer to numerous documents to show the causes why the receipts for lead leases have been so inconsiderable. The examination would prove that these causes were not intrinsic, and necessarily attendant upon any system which might be adopted, but extraneous and easily removable. I will make but a single extract from a valuable document on this subject from this department, presented to the House of Representatives on the 1st of February, 1843:

"From the year 1821, when the control of these mines was transferred from the Treasury to the War Department, and placed in the immediate control of this [the Ordnance] bureau, to the 30th September, 1834, the United States received for the rent of that portion of them then worked no less than 4,929,420 pounds of pure lead. An opinion then became prevalent among the miners and smelters, that no further claim for rent could be sustained, and payment was altogether refused. To counteract this impression, it became necessary to institute a suit against two of the most prominent delinquents, (Burton & Gratiot;) but this suit being carried up to the Supreme Court of the United States, it was not till the January term, 1840, that judgment was obtained in favor of the United States, so that operations could be renewed at the agency with any prospect of success. By this time, however, a host of new difficulties had arisen, from the mal-administration and disobedience of orders of the register and receiver of the land office at Mineral Point, and which has been the basis of most of the neglects and refusals of rent up to the present time."

This "host of new difficulties" hung over the operations of the government in regard to the leases for the lead lands, and almost defeated all efforts to collect rent, until the decision of the case of the United States against Gear, by the Supreme Court of the United States, at its last term. By this adjudication several of the contested rights of the United States were settled. The questions raised in that case brought under review nearly every act of Congress relative to the mineral lands, and the opinion of the court therein delivered is a better exposition than I can make of the defects of the legislation of Congress on the subject. [See the opinion of the Supreme Court of the United States in the case of Gear, marked F.]

Though the legal difficulties are not all settled, yet, by that case many of the erroneous views of the miners and smelters have been corrected, and its effects upon the revenue from the lead lands have been remarkable. The amount of rent received in 1844 was 78,321 pounds, worth only \$2,349 63, valued at three cents per pound; but in the next year, 1845, after this decision was known, the amount of rent lead received was 233,778 pounds, and \$3,306 06 in cash—equal to \$10,839 46. By a partial settlement of the disputes which have arisen, the rents have increased more than four hundred per cent. during the last year. When these controversies are terminated—as, under proper management, they soon may be—when proper laws are enacted to secure the just rights of the United States, and these laws enforced, these rents will become a considerable source of revenue. Then the results of the management of the lead lands will not be the basis of an effective argument against turning the copper mines to public account.

Some erroneous impressions prevail in relation to the expenses of the Galena agency. The proper expenses do not exceed three thousand dollars per annum; but in the accounts rendered, the payments for the litigation which the government has been forced into to sustain its rights have been included with those for conducting the agency, and by some mistaken for its permanent annual expenses.

It is now nearly three years since the copper region of Lake Superior was opened. Considerable sums have been expended, but no return of rent has yet been received. Of the numerous mines discovered, only

four have been wrought, and those for a short period and to a limited extent. There are no means of ascertaining the value of the ore which has been taken therefrom, but the quantity is over three hundred tons, and, when smelted, the share coming to the government will aid materially in remunerating it for the expenses already incurred.

So far as mining is concerned, the business has but commenced in the copper district. All calculations as to the productiveness of this mineral region, are, to a great extent, conjectural; but it is quite certain, if the mining business is profitable to the individuals engaged in it, as a necessary consequence it can scarcely fail, under proper regulations and management, to be so to the government.

In answer to that clause in the resolution which asks for "the character of the permits and leases," I herewith transmit a blank copy of each—the permit marked G, and the lease marked H. Some changes in the forms of the permits were made more than a year ago, and one in the month of April last. The latter change reduced the quantity of land from a tract not more than three miles square, to a tract not more than one mile. On the 17th of July last the issuing of permits for the copper region was suspended.

Authority was given to the agent having charge of the Lake Superior region to receive applications from persons who were there in person, without a regular permit from this department. These applications were in the following form:

"To

Superintendent of the mineral lands of Lake Superior:

"SIR: Being in this mineral district, I have selected a tract of one mile square, with a view of applying to the War Department for a lease of the same, although, as I was unacquainted with the requirements in such cases, I neglected to obtain the customary permit authorizing such a selection. But, as this selection has been made in good faith and with a full intention of mining on said tract, if I can obtain a lease of the same, and as I shall be prepared to give the customary bond for the fulfilment of the conditions of the lease, I have to request that, as soon as you can become satisfied that my selection does not interfere with any other authorized selection, you will certify your approval of it. My place of residence is _____, in the State of _____, and I wish the lease and bond sent to me at _____, to be executed.

"The following is a true description of the tract above mentioned: Beginning at

"Dated at _____ this _____ 184 ."

[Here sign with name in full.]

"I have carefully examined the description of the tract above applied for, and find that it does not interfere with any other location made under proper authority; and I recommend that a lease be granted as prayed for.

"Dated at _____ this _____ 184 ."

"NOTE, for the government of all concerned.—This paper is not assignable, and if it is not forwarded to the War Department in time, so that a lease and bond can be prepared and fully executed and returned to the

War Department within six months from the date of the superintendent's approval, the tract will be open to selection by any other person. The bond will be in the penal sum of three thousand dollars, and must be executed with one or more sureties, whose sufficiency must be certified by the United States district attorney, or judge, of the district in which they reside. This tract must be of a square form, the four sides not exceeding in length one mile each, bounded by due east and west, and north and south lines, in all cases where the boundary is not determined by the lake or some other sheet of water, or by some other locations previously made; and the description must be accompanied by a plat of survey of the same, exhibiting the courses and lengths of the exterior lines, together with the name and general course of any river, stream, or other water, running through, lying within, or bounding the same; together with the bearing and distance of the point of beginning of such survey from some well-known or easily-identified natural permanent object."

I deem it proper to make some remarks upon the leases which have been issued for locations in the mineral region. I have been much surprised at the exceedingly great value which has been attached to these leases, and think it can only be ascribed to a misapprehension of the terms and conditions of them and of the rights they confer.

They are limited to a term of three years, with a clause for a contingent renewal for two terms of three years each. Should Congress pass a law directing the sale or other disposition of the premises, then it is a simple lease for three years, with numerous stringent covenants by the lessee, the performance of which is secured by a penal bond and conditions of forfeiture in the lease.

All idea of a pre-emptive right is barred by the express provisions of the lease; all claim for improvements, or reimbursement for the investment of capital, is expressly renounced. Each lessee covenants that he will work the mines "with diligence and skill;" "commit no waste, nor suffer it to be committed;" and "*that, at the termination of this lease, the said tenant or tenants shall have no claim upon the government of the United States for payment or remuneration for buildings or improvements erected on said demised premises, or expenses incurred in their erection.*"

There is also an express covenant to remove from the premises within three months after the term of the lease has expired, or after notice that the lease has become forfeited by a non-compliance with the conditions and terms therein contained. If Congress do not pass a law directing a sale or other disposition of the premises during the first term of three years, and the lessee complies with all the conditions and agreements in the lease, he is to have the premises for a second period of three years, with increased rent; and on the like terms it can be renewed a second time.

Thus it will be seen that in no event can the premises be held under the contract with the lessee, by him or his assigns, more than nine years, and it may not extend beyond three; there can be no pre-emptive right under the contract—no legal claim for buildings or improvements. Such is the extent of the rights conferred by the leases which have been granted, and such are some of the restrictions imposed upon the lessee and those deriving rights from him.

I trust I shall not be understood as advocating a harsh and severe course towards those citizens who have acquired, or may desire to acquire,

an interest in the mineral lands. The government may do justice to itself without being unjust or illiberal to them. It ought to encourage their enterprise, open to it a fair field, and secure it a liberal reward; and it can do so without abandoning its own undoubted rights, or surrendering to them, without a just equivalent, property which presents a fair prospect of becoming a fruitful source of revenue.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon. GEORGE M. DALLAS,
*Vice President of the United States
and President of the Senate.*

List of accompanying documents.

- A. Report from the Ordnance Bureau, containing—D, statement of permits and leases issued; E, statement of mining operations.
- B. Report of Messrs Tod and Bartlit.
- C. Contested claim of A. W. Spies to a location.
- F. Copy of the opinion of the Supreme Court of the United States in the case of Gear.
- G. Blank form of a permit.
- H. Blank form of a lease.

A.

ORDNANCE OFFICE,
Washington, January 13, 1846.

SIR: In answer to the resolution of the Senate of the 6th instant, calling for "such information relating to the mineral regions of Lake Superior as may remain in the Department of War; the nature and extent of the control exercised by the Secretary of War or the department in relation to the same; the number and character of the permits and leases supposed to have been issued to occupiers of, or applicants for, any such mineral lands; together with the number of applications for such permits, &c. which have been denied," and which resolution you have referred to this office, I have the honor to report: That all the information thus called for, which it is in the power of this office to afford, is contained in the annexed printed extract from the annual report from this office, addressed to you 31st of October last, commencing on page 4, except as regards changes since made in the tabular statement D; to exhibit which, I have caused that table to be reconstructed, and it is herewith annexed in manuscript.

This manuscript table will show that 65 permits have been issued authorizing selections of tracts of three miles square each, of which 49 have been returned with the selections under them described; that 34 leases have been prepared on these, and 22 of them have been fully executed in addition to the twelve mentioned in the report of 1st November, 1844. It will be further seen that 827 permits have been granted, authorizing the selection of but one square mile each, 255 of which have been

returned with the selections under them described ; that leases have been prepared on 169 of these, 75 of which have been fully executed ; and further, that 468 applications for such permits have been denied, or, in other words, await the result of the examinations going on as regards the propriety of further issues.

As to the further call in this resolution for "a statement of such inconveniences or defects as may have been practically experienced in the management of said lands, together with his opinion of the best mode, by legislation or otherwise, of obviating the defects of the present system," I would respectfully state, that as it was supposed that the object in sending Messrs. Bartlit and Tod to that country last fall was to furnish you with this information, this office is not prepared with sufficient facts to give an opinion. A report from those gentlemen to you is understood to be in course of preparation.

The resolution is herewith returned.

With great respect, I am, sir, your obedient servant,

G. TALCOTT,

Lieutenant Colonel of Ordnance.

Hon. W. L. MARCY,

Secretary of War.

[Extract from the annual report from the Ordnance Bureau, of 31st October, 1845.]

Lead mines of the upper Mississippi, or the Galena district.

The mining district which has heretofore borne the designation of the upper Mississippi embraces 17 townships and fractional townships in the northwest corner of Illinois, the mineral lands in the Territory of Wisconsin from the Illinois line north to the Wisconsin river, and those on the opposite side of the Mississippi in the Territory of Iowa ; but, since the formation of a new district lying higher up the Mississippi, which will be spoken of in its proper order in this report, it will be necessary to designate this one by another name ; and that of the Galena district has been adopted, from the name of the principal town within its boundaries.

Since the date of the last annual report, which, in speaking of this district, referred to the suits then pending in the case of Gear, the Supreme Court of the United States has certified its opinion to the district court of Illinois that "it was not intended to subject lead mine lands in the districts made by the act of June 26, 1834, to sale as other public lands are sold, or to make them liable to a pre-emption by settlers," and that "digging lead ore from the lead mines upon the public lands of the United States is such a waste as entitles the United States to a writ of injunction to restrain it."

Immediately upon the reception of a copy of this opinion, Mr. Floyd, the superintendent of this district, was instructed to insist upon the payment of rent for all mineral dug on lands for which patents had not issued ; to insist upon full payment of all balances of rent due on leases ; and to renew no lease until such balances had been paid. These instructions further allowed him to employ counsel to defend lessees in suits brought against them for digging by those pretending rights under certificates of entry, or as pre-emptionists, should any such be again attempted, and to

apply for writs of injunction, and to have suits brought for the recovery of rents.

The superintendent gave notice through the newspapers, on the 23d of May last, of the reception of these instructions; and, on the 2d of June addressed this office, stating that it had created much excitement among those who held entered land; that they protested against the United States assuming any right over these lands, or, at any rate, until the money which they had paid to the land office should have been paid back to them; and he (the superintendent) asked whether it would not be advisable to modify his instructions. In answer to this letter he was told, 12th of June, that there could be no cases of entry in Jo Davies county, Illinois, or in Du Buque county, Iowa, as the lands in the mining portions of those counties had never been proclaimed for sale; and as to those in Wisconsin, it was thought there could have been but few entries allowed on the lands indicated as containing mines by the plats of survey, although it was known that many entries were allowed when the evidence of their containing mines was merely made known to the register and receiver by individuals, (both cases equally excluded by the President's proclamation;) but it was the desire to leave it to his discretion how far to push at once the right to lease.

After these second instructions had been sent off, a memorial, numerously signed, and addressed to the President of the United States, was forwarded to him with a letter from the honorable Mr. Hoge, who joined with the memorialists in asking a modification of the instructions which had been given to the superintendent. This letter and memorial were referred to this office; and in the report thereon of the 20th June, 1845, a copy of the modification of 12th June, above mentioned, was given. This report was also accompanied by a copy of the opinion of the Supreme Court, and of the proclamations which reserved the mineral lands from sale.

A further letter was received not long after from the superintendent, bearing date 28th July, stating that, in order to facilitate the further leasing of the mines, he circulated handbills through the country appointing given days to be at given places for that purpose; that at Mineral Point, by apparent concert of action, none were called for; at Potosi, they took leases promptly; but at Du Buque, in Iowa, he was met by persons who attempted to argue him into an abandonment of his purpose; and when that failed, by threats of forcibly carrying him across the river, (i. e. out of the Territory,) and at length by a request that he would suspend operations till he could report this state of feeling, and obtain further instructions, to which he consented, and it was the object of that letter to obtain. The letter further stated that the people of Du Buque really appeared to believe that Congress had passed no law authorizing the leasing of mines west of the Mississippi; overlooking entirely, it would seem, the fact that there were two acts passed 3d March, 1807; one authorizing the leasing in what was the then Territory of Indiana east of the Mississippi, and the other the mines "on all lands ceded or secured to the United States by treaty with a *foreign* nation, or by cession from any State;" and that it must have been in virtue of this last named act that the mines in Missouri were leased, till the passage of the act of 3d of March, 1829, which authorized their sale. As regards the lead mine lands in Wisconsin, the superintendent states that, in a long interview with the chief justice of that

Territory, that officer was understood to maintain that no matter how fraudulent the *entries* may be, yet the government has actually parted with the title by its agent of the land office.

This office has on many occasions, during the last ten years, urged that these lands be sold; and I cannot forbear, on this occasion, renewing that suggestion, as I believe that an act might be prepared which would be satisfactory not only to the large claimants, but to the working lessees. By far the largest and richest portion of these mines are held and worked under entries at the land office, or they are on lands which have been granted by special acts of Congress, or are such as are held by pre-emption claimants, who keep possession in defiance of the leasing system. Even of those who take leases, few comparatively acknowledge the quantity they dig, or that is dug by others under bargain with them, or who pay thereon the rent in full; while others again, it is asserted, obtain leases merely as an additional means of preventing their claims from being "*prospected*," (i. e. dug upon by those seeking new *lodes*,) and thus proving their land to contain mines, till it shall have been sold to them at the ordinary price; and thus the yield to the government is merely nominal.

The following statements will show the operations which have come under the cognizance of this bureau during the last year, it being borne in mind that the term of the leases is for one year only, but renewable, and that the rent is *six* per centum of the pure lead obtained from the mineral dug, or a like per centum of its market price in money at Galena.

Number of leases granted from October 1, 1844, to October 1, 1845. [The last annual report on this branch of duty having been brought up to the first named date.]

| | | | | | |
|-----------|---|---|---|---|-----|
| Illinois | - | - | - | - | 343 |
| Wisconsin | - | - | - | - | 165 |
| Iowa | - | - | - | - | 10 |
| | | | | | — |
| Total | - | - | - | - | 518 |
| | | | | | — |

| | |
|--|-----------|
| The number of pounds of mineral reported within the year by the lessees as having been dug on the lands leased to them, is | 7,541,993 |
| Pounds of pure lead which this should yield at 70 per cent., that being the average yield of the mineral from these mines | 5,279,400 |
| Pounds of pure lead due thereon as rent to the United States, at 6 per cent. | 316,764 |
| Pounds of lead paid to the United States, in kind, during the year | 165,175 |
| Ditto paid for in money | 33,377 |
| | — |
| | 198,552 |

| | |
|---|---------|
| Of which there was paid for rents which accrued prior to the year | 37,077 |
| | — |
| | 161,475 |

| | |
|--|---------|
| Leaving this amount due for the operations of the year | 155,289 |
| | — |
| | — |

The expenditures on account of these mines within the year, including all salaries, services, and incidental expenses, are \$5,823 80 From which deduct fees of counsel and costs of suits, &c. incurred prior to the year, together with the salary of special agent till that office was dispensed with - - - 2,825 45

Leaving for the current expenses of this district - - - 2,998 35

Mines in the south part of Illinois.

In my two last annual reports it was stated that no leases, or permits had been granted for any part of the sixty-eight sections which were reserved from sale as mineral lands in the Shawneetown land district, in 1815, since the expiration of the permits to Shackelford and others, and to Gordon and others, in 1843, in consequence of the want of mineral agents there; and that such an agency had not been recommended, from a belief that the expenses would be greater than the proceeds. During the present year, however, several applications having been received for permits to explore these mines under a revived confidence that they would be found rich in metals, and one of the military storekeepers of this department being released from duty by the breaking up of the depot of arms at Rock island, he was ordered to take up his quarters temporarily at these mines, and directed to overlook and certify such selections as might be made under any permits granted by the War Department, and to examine and report as to the condition and probable value of the mines. Several such permits have been granted, ten in all, to persons to select not exceeding one square mile each; but, as yet, no selection has been returned in such form that a lease could be founded thereon, and a sufficient length of time has not elapsed to obtain the report required.

Mines in the State of Arkansas.

No leases, or permits for selections of tracts with a view to leases, have ever yet been made for any part of the five townships on the northern confines of this State, which were reserved from sale as mineral lands in July, 1842, from the continued inability of this office to assign any of its officers to superintend the operations there, and the continued belief that the expense which would attend the appointment of an agent would be greater than the proceeds likely to be obtained as rent.

Mines of Lake Superior.

In the annual reports from this office of 1st November, 1843, and 1st November, 1844, I stated what were the causes which led the War Department in April, 1843, to grant permits for the selection of mining tracts on the southern shore of this lake, viz: That it was represented that large bodies of unauthorized persons were preparing to take possession of these mines, which it was feared would produce collisions with the Indians; and it being thought better to authorize persons to select tracts, with a promise of leases for the same upon receiving an obligation on their part to report their transactions, and pay to the government a stipulated rent, rather than to risk its falling into the hands of persons acting without authority. I

also stated that, up to the date of the last mentioned report, twelve leases, for three miles square each, had been granted, and bonds obtained for the fulfilment of the conditions. The last report further spoke of numbers of permits having been granted, the selections under which had not been up to that time reported.

Permits continuing to be called for in numbers far beyond the original expectation, it was determined by you, on the 21st of March last, to issue such as would allow the selection of only one square mile each; and even with this limited area, the number which had been called for up to 17th of July had become so great, that a stop was put to their further issue after that date; at least till those already issued had been located, or the year allowed for their location had expired. This was also made known to the superintendent of the district, who had been authorized to certify selections made by persons in that district, who should state to him that they had neglected to obtain the customary permit only from being unacquainted with the requirements in such case, but were prepared to give the customary bond.

Although the original instructions given to the special agent in 1843, in relation to these mineral lands, described them as being in the region of country lying south of Lake Superior, which was acquired from the Chippewa Indians, and the permits then issued by the Secretary of War limited their operation to the lands south of the lake, and it was that form of permit only which the special agent was directed to use, yet, upon the reception of his report of operations, dated 4th of March, 1844, it appeared, from a list of applicants which accompanied it, that many of them had applied for tracts on Isle Royale, an island lying about sixty miles north of the south shore of the lake. The report stated that although he had concluded to issue none of the permits himself, all applicants had been required to sign a set of regulations, commencing with one of these printed forms of permit. It also appeared, by reference to marks on the list spoken of, that none of those who had applied for tracts on Isle Royale had, up to that time, reported their selections; and it was not known in this office what had been done in relation thereto till the 31st of May following. On that day, the special agent lodged in this office a rough diagram of the island, showing it divided by imaginary lines into forty-three squares of three miles square each, as near as the shape of its coasts would admit, numbered from 1 to 43, with a name set opposite each number, and an endorsement of the agent thereon, recommending that whenever the lands should be surveyed the Secretary of War should issue leases for the same: this, too, although it appeared, by his report above mentioned, that these persons must all have signed the regulations restricting them to the region south of the lake; and, upon such a transaction, it has been importunately urged by several of the persons so named, or their assigns, that leases should be granted to them. It moreover appeared in the course of 1844, and up to the 6th of February, 1845, that even regular permits, which restricted the selection to the region south of the lake, had been located on this island, in conflict with those of 1843. In consequence of this state of things, and to take away all pretence for misunderstanding the intention of the government, it was recommended to your predecessor on the day last named, and obtained his approval, that all future permits should contain a special clause making known that Isle Royale could not be embraced in their operation, and no selection of a tract thereon has ever been recognised.

To return to the transactions south of the lake. Between the date of the last annual report and the 17th July last, when the further issue of permits for this region ceased, as above mentioned, 787 were sent from this office. In addition to which, 31 of those which were issued by the former special agent, in 1844, have been returned to this office located, together with 75 certified locations, on applications to the present superintendent.

The accompanying tabular statement D will show the States and Territories from which the whole of these applications for permits were made—by whom the permits were signed—the size of the tracts authorized to be selected—the number returned to the War Department, with the selection described thereon—the number of leases prepared and sent out for signature and bond, preliminary to being executed on the part of the United States, and the number executed and returned to the lessees.

During the last winter, Hussey & Co., the holders of leases Nos. 4, 5, and 6, spoken of in the last annual report, represented that, in the present condition of the country, they could not advantageously smelt their ores in the mineral region, as conditioned in their leases, and they therefore asked permission to transport those ores out of said district in their crude state. After much consultation and reflection, your predecessor consented to allow them to remove not exceeding 500 tons, upon condition that they should not carry it beyond the bounds of the United States, and should pay the same per centum at the place of smelting as was provided for in the leases if smelted where dug, without any deduction therefrom for the transportation. This agreement, when returned with the signatures of these lessees and their sureties, received your approval. Like applications were soon after made by the holders of leases Nos. 1, 2, 3, 8, and 10, and permission was granted to them on the same conditions. It is represented that the *black oxide* of copper, the only ore which has thus far been removed under permission, is easier converted into sulphate of copper, (blue vitriol,) for which there is a constantly increasing market, than the metal could be which might be obtained from it by smelting, and hence that it will yield a greater profit to the miners by being sold in that state. It is even asserted that the other descriptions of copper ore, after being crushed and washed in the mining district and transported in that condition, are also better suited to the operations of the manufacturers of *vitriol* than if smelted; and that moreover, by this process of conversion into *vitriol*, the silver which they may contain is separated, and left in the best condition for further treatment. In this view, it is believed that it will be of advantage to both parties to these leases that the six per centum of all metal obtained from the ores dug, which the leases provide to be paid to the United States as rent, shall be changed to six per centum of the price paid for these ores in the condition in which they reach the manufacturers, with six per centum of the market value of the silver thus separated from the copper.

On the first of September last, during the absence of General Stockton, the superintendent, a circular was sent out to the various lessees and their agents, by the assistant left in charge as acting superintendent, containing a number of interrogatories with a view to obtaining their reports as to the condition of things within the bounds of the several tracts. When the last report from that region which has come to hand was made, the answers had been but partially received. The accompanying statement

E will present a synopsis of these answers, together with the quantity of ore shown by the returns, as far as received, to have been dug, and the quantity which has been shipped for the sea board under the special permissions hereinbefore mentioned.

No rents have been yet received by the United States for the products of these mines. The expenses from the first establishment of the agency in 1843, up to 30th September last, have been \$19,385 37, which sum has been paid from the appropriations for ordnance service.

If the system is carried on, it would seem proper that a distinct appropriation should be made for the mineral land service, and my estimate for the ensuing fiscal year contains an item for that purpose.

Mines of the Mississippi above Prairie du Chien.

In the course of this last year, so many applications were received asking permits to locate tracts with the view of obtaining leases thereof on the St. Croix, Wisconsin, and Kickapoo rivers, where it was stated that deposits of valuable ores were believed to exist, that a new district was formed, to embrace the mineral lands lying on both sides of the Mississippi, from Prairie du Chien to the falls of St. Anthony, extending back to the heads of the streams falling into the Mississippi within that distance, and John C. McLemore, esq., of Tennessee, was appointed the superintendent thereof on the 12th of July last.

The permit for three miles square in this region, which was mentioned in my last annual report, expired by its own limitation without a return thereof; and although the five others mentioned in that report as having been granted for three sections each have been returned, yet no leases have been prepared on either of them.

On the 14th of February last, another permit was issued for a tract of three miles square on the St. Croix; the selection under which having been protested against as interfering with the rightful claims of others, the lease has been refused; and on the 10th of March another was issued for three sections on the Wisconsin and Kickapoo, which has not yet been returned. Your order of 21st of March, hereinbefore spoken of, restricting permits to one section, then became applicable to this district; and of the forty-eight since granted therein, none have exceeded that area. No selections under these have been yet reported, and consequently no leases executed.

The superintendent has been directed to report, as early as practicable, the condition of things in this new district, and its prospects as a mining region. His report may be looked for in the course of the next month.

G. TALCOTT,

Lieutenant Colonel Ordnance.

Hon. W. L. MARCY,

Secretary of War.

D.—Statement of the number of permits, and leases consequent thereon, which have been granted for the mining district on the south shore of Lake Superior since November 1, 1844.

| States and Territories in which the applicants were stated to reside. | By Wm. Wilkins, Secretary of War. | | | | By Wm. L. Marcy, Secretary of War. | | | | By G. Bancroft, act'g Sec. of War. | | | | By W. Cunningham, late sup't. | | | | By J. Stockton, present sup't. | | | | Totals. | | | |
|---|-----------------------------------|-----------------------|------------------|------------------------|------------------------------------|-----------------------|------------------|------------------------|------------------------------------|-----------------------|------------------|------------------------|-------------------------------|-----------------------|------------------|------------------------|--------------------------------|-----------------------|------------------|------------------------|---|--|--|---|
| | Permits for 3 miles square. | No. returned located. | Leases prepared. | Leases fully executed. | Permits for 3 miles square. | No. returned located. | Leases prepared. | Leases fully executed. | Permits for 1 mile square. | No. returned located. | Leases prepared. | Leases fully executed. | Permits for 3 miles square. | No. returned located. | Leases prepared. | Leases fully executed. | Permits for 1 mile square. | No. returned located. | Leases prepared. | Leases fully executed. | Total No. of permits granted within the year. | Total No. of these permits returned located. | Total No. of leases prepared on these permits. | Total No. of leases executed for these permits. |
| Maine | - | - | - | - | - | - | - | - | 15 | 3 | 3 | - | 7 | 3 | - | - | - | - | - | - | 22 | 6 | 3 | - |
| New Hampshire | - | - | - | - | - | - | - | - | 4 | - | - | - | 1 | - | - | - | - | - | - | - | 5 | 1 | - | - |
| Vermont | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - |
| Massachusetts | 8 | 5 | 1 | 1 | 1 | - | - | - | 55 | 16 | 11 | 11 | 3 | 1 | 1 | 4 | 4 | 4 | 4 | - | 71 | 26 | 17 | 16 |
| Connecticut | 2 | 2 | 2 | 2 | - | - | - | - | 7 | - | - | - | 4 | - | - | - | - | - | - | - | 13 | 2 | 2 | 2 |
| New York | 7 | 5 | 5 | 5 | 2 | - | - | - | 165 | 19 | 16 | 10 | 47 | 4 | 3 | 8 | 8 | 8 | 5 | 10 | 239 | 46 | 41 | 23 |
| Pennsylvania | 3 | 2 | 2 | - | - | - | - | - | 48 | 18 | 8 | 1 | 29 | 3 | 7 | 1 | 1 | - | - | - | 81 | 29 | 17 | 1 |
| Delaware | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Maryland | 1 | - | - | - | - | - | - | - | 11 | 3 | 3 | 3 | 1 | - | - | - | - | - | - | - | 13 | 3 | 3 | 3 |
| District of Columbia | 1 | - | - | - | - | - | - | - | 21 | 5 | 3 | 1 | 10 | 10 | 3 | 4 | - | - | - | - | 33 | 16 | 12 | 5 |
| Virginia | 1 | 1 | 1 | 1 | - | - | - | - | 4 | - | - | - | 3 | - | - | - | 1 | 1 | 1 | 1 | 10 | 2 | 2 | 2 |
| Louisiana | 1 | 1 | 1 | 1 | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Tennessee | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 1 | - | - | - |
| Kentucky | - | - | - | - | - | - | - | - | 1 | 1 | 1 | - | - | - | - | - | - | - | - | - | 1 | 1 | - | - |
| Missouri | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 7 | 6 | 6 | 3 |
| Illinois | - | - | - | - | - | - | - | - | 2 | 2 | - | - | - | - | - | - | 5 | 5 | 5 | 1 | 8 | 8 | 2 | 1 |
| Indiana | - | - | - | - | - | - | - | - | - | - | - | - | 3 | - | - | - | - | - | - | - | 3 | - | - | - |
| Ohio | 2 | 1 | - | - | 1 | - | - | - | 12 | 2 | 2 | 1 | 5 | 2 | - | - | 1 | 1 | 1 | 1 | 24 | 8 | 3 | 2 |
| Michigan | 3 | 2 | 2 | 1 | - | - | - | - | 171 | 48 | 38 | 17 | 115 | 32 | 26 | 5 | 55 | 55 | 24 | 15 | 346 | 139 | 90 | 38 |
| Wisconsin | 1 | 1 | 1 | - | - | - | - | - | 1 | 1 | - | - | 1 | - | - | - | 2 | 2 | 1 | - | 10 | 9 | 3 | - |
| Iowa | - | - | - | - | - | - | - | - | 1 | - | - | - | - | - | - | - | - | - | - | - | 2 | 1 | 1 | - |
| | 30 | 20 | 15 | 11 | 4 | - | - | - | 520 | 118 | 85 | 44 | 230 | 60 | 45 | 9 | 31 | 29 | 19 | 11 | 892 | 304 | 203 | 97 |

In addition to the above, 468 persons have applied for permits to select tracts in this district since the 17th July last, all of whom have been replied to, that, if the disclosures of the examinations going on will warrant further issue of such permits, they will be considered in the order in which they have been received.

Statement of the mining operations in the Lake Superior mineral district, same: compiled from answers to interrogatories propounded by the act from that

| Numbers given to the leases, in relation to which the reports have been received. | Number of buildings erected, and other improvements made. | | | | | | | | | | | | | |
|---|---|------------|------------------------------|--|---------------|-------------------|---|------------|------------------------------|-------------|-----------------------|------------------------|---------------------------------------|--|
| Log dwelling-houses, one and a half and two stories. | Log dwelling-houses not described. | Saw mills. | Crushing and pounding mills. | Blacksmiths, carpenters, and coopers' shops. | Store-houses. | Powder magazines. | Other buildings, for offices, stables, bake-houses, &c. | Mill dams. | Feet of canal, or mill-race. | Boat docks. | Perches of road made. | Number of shafts sunk. | Total depth, in feet, of shafts sunk. | |
| 1 | 1 | | | | | | | | | | | | | |
| 2 | 9 | 1 | 1 | 3 | 2 | 1 | 5 | 2 | 840 | | 4,200 | 4 | 164 | |
| 3 | 4 | | | 1 | 1 | | | | | 1 | 640 | 5 | 70 | |
| 7 | | | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | | | |
| 9 | 4 | | | 1 | 1 | | | | | | | | | |
| 10 | | | | | | | | | | | | | | |
| 11 | | | | | | | | | | | | | | |
| 4 | 3 | | | 4 | 3 | | | | | | | | | |
| 5 | 4 | | | 1 | 1 | | | | | | | | | |
| 6 | 1 | | | | | | | | | | | | | |
| 12 | 1 | | | | | | | | | | | | | |
| 13 | | | | | | | | | | | | | | |
| 14 | 1 | | | | | | | | | | | | | |
| 15 | 2 | | | | 1 | | | | | | | | | |
| 16 | | | | | | | | | | | | 1 | 25 | |
| 17 | 1 | | | | | | | | | | | | | |
| 24 | | | | | | | | | | | | | | |
| 25 | | | | | | | | | | | | | | |
| 27 | | 1 | | | 1 | | | | | | | 1 | 40 | |
| 28 | | | | | | | | | | | | | | |
| 29 | | | | | | | | | | | | | | |
| 5 | 31 | 1 | 1 | 10 | 10 | 1 | 5 | 2 | 840 | 1 | 4,840 | 11 | 299 | |

The whole of the leases above named are on Point Keweenaw, with the exception of Nos. 24 and 29, from one of the shafts are also reported; and it is stated that the cost of the operations on

E.

and of the preparations made to September 1, 1845, for prosecuting the mining superintendent at Copper Harbor—with the quantity of ore shipped district.

| Number of veins or lodes discovered. | Description of the ores. | Average number of men employed during the last summer. | Number of men intended to be employed during the ensuing winter. | Pounds of ore taken out of the mines and veins. | Pounds of ore shipped for the seaboard. |
|--------------------------------------|--|--|--|---|---|
| 2 | Metallic copper and red oxide | 150 men are employed on these 8 locations in mining, exploring, & other operations, for the lessees. | not stated | Specimens only | |
| 3 | Native copper and silver | | do | 180,000 | |
| 1 | Metallic copper and silver | | do | 8,000 | |
| 11 | Metallic copper | | do | Specimens only | |
| 1 | Metallic copper and silver | | do | do | |
| - | - | | do | do | |
| - | - | | do | do | |
| 1 | Metallic copper | | do | 41,967 | 33,515 |
| 2 | Black oxide and silicate of copper, containing small parcels of native copper. | | do | | |
| 4 | Native copper and spar lodes—thought to be worth working. | 73 men on these 3 locations. | do | | |
| 1 | Native copper and silver | | do | 16,000 | |
| 3 | Native copper | | do | Specimens only | |
| - | Native copper, scattered about | | do | do | |
| 2 | Native copper | | 5 to 10 | | |
| - | - | 10 | 10 | | |
| 1 | Native copper in vein stone of cal. spar | | | 1,000 | |
| 1 | Green carbonate in cal. spar | 6 | 6 | | |
| - | - | - | - | Surface operations only. | |
| - | - | - | - | Surface operations only. | |
| 1 | Native copper in cal. spar | 13 | 13 | Specimens only | |
| - | - | - | - | Surface operations only. | |
| - | - | - | - | Surface operations only. | |
| 34 | - | 257 | - | 246,967 | 33,515 |

and 25, which are on the Montreal river. In the report of operations on No. 2, an *adit* and that location has been about \$100,000.

B.

WASHINGTON CITY, *February 10, 1846.*

SIR: The undersigned, appointed on the — day of August last to examine into the mining operations in the region of Lake Superior, respectfully report:

That they commenced the investigation immediately after receiving their appointment and instructions, and have continued the examination with but little interruption to this time.

As directed, we immediately repaired to Copper Harbor, and remained in the mineral district until the 14th day of October—a period quite as late as we could with safety remain.

The time at our command did not enable us to give the country that examination necessary to acquire a thorough knowledge of its wealth and resources, from a personal examination. We have, therefore, to rely mainly, as to the extent of the mineral country, on the representations of others.

From sources entitled to credit, we learn that the country abounds in rich veins of copper from Chocolate river to Fond du Lac, a distance (by the coast) of about four hundred miles. Some thirty miles of this coast, viz: a point about ten miles east of Copper Harbor to Eagle river, we explored on foot, with much care and attention. This portion of the country fully sustains the high character given it for mineral wealth by the officers and agents of the government, who have heretofore reported the results of their explorations to the department, and enables us to say, without hesitation, that the copper mines upon the southern shore of Lake Superior are, beyond all question, the richest that ever have been discovered.

The native or virgin copper and black oxide are the prevailing ores of copper. We also saw some ores of the red and green oxides. We had not the means of causing any of the ores to be analyzed, and therefore cannot speak with any certainty as to the quantity of pure metal in any given amount.

As much has been published to the world as to the richness of some of these veins in gold and silver, we regret that, from the reason before alluded to, we cannot speak with any degree of certainty upon the subject. It is due, however, to truth, to express the opinion we entertain, that the main value of all that portion of the country we visited consists in the copper ore there found. We did not visit the "iron region;" but, from specimens exhibited, and from information received and derived from many sources entitled to our fullest confidence, we have no hesitation in saying that iron ore of the finest quality, and in great abundance, is found upon the waters of Dead river. From all the sources within our power, we are led to the conclusion that lead is not found in this district. We are sensible that upon this point, viz: the existence of lead in the district of country bordering upon the southern shore of Lake Superior, we come in collision with some of the agents of the government who have heretofore reported upon the character of the country. Still we are forced to the conclusion that those who have expressed a different opinion have relied upon information not warranting the conclusion.

Without, then, going into a more full statement of facts with regard to the character of this portion of the public domain, we express the opinion that it is of immense value to the country, and, if properly managed, cannot fail to be a source of much revenue to the government. It is deemed

proper, in this connexion, to comply with part of your instructions to us, which requires us to "report upon the defects in, and objections to, the system pursued by the government and its agents, and suggest the best remedy, in your (our) opinion, for the evils that may be found to exist, and the best policy for the country and all concerned in the future management or disposal of these mineral lands."

The system pursued by the government in the disposition of these mineral lands is, in our opinion, radically defective in many particulars, and calls loudly for a change.

The grand superiority of our government over those of most of the countries of Europe is attributable to the fact that all of our citizens may become, and most of them are, the lords of the soil they possess. This identifies and attaches the holder to the particular neighborhood in which he may reside, and completely identifies him with its prosperity and character. He delights in boasting of its reputation for honor and integrity, and is ever a faithful watchman over the conduct of its inhabitants. Not so with the tenant. His residence is but temporary. Many of them feel and care not, as they are soon to leave, for the reputation of the country. It is not their home, and therefore they become reckless and heedless of their own conduct, as well as of the conduct of those around them. The consequence is, that the arm of the law, and that alone, restrains the vicious and checks the dissolute. If we are right in these conclusions, as the sole purpose of our government is to secure the peace and happiness of the people, it should, in all of its actions, carefully abstain from promoting, for any purpose whatever, a system of tenantry. Again; a permanent interest in the lands is absolutely necessary for the economical and profitable management of these mines, either to the government or the occupant. Mills, furnaces, and houses, expensive in their construction, are required. What prudent man would encounter these outlays when secured to him only for nine years? But again; should this system be continued, this large and valuable district of country would be exonerated from bearing its just and equitable proportion of the burdens of the government. The miners and others who may reside there will have the protection of the laws of the State, and they should be compelled to pay, in common with other citizens of the State, their just share of the expenses incident to maintaining those laws. The plan, therefore, of disposing of these lands by lease, should be abandoned.

By the system adopted, the applicant is required to make his own survey of the ground for which he desires a lease. This has given rise to a great many disputes between the applicants themselves, as well as between the applicant and the government, which will require much care and patience on the part of the government to settle. This difficulty will evidently continue so long as applicants are permitted to locate upon unsurveyed lands, and should therefore be discontinued.

The system pursued is altogether more expensive than is necessary. In our opinion the employment of two agents, with an allowance for one clerk each, properly located, is amply sufficient to superintend the making of locations, and the collection of rents, &c. An inspector or collector, to be located at the outlet of Lake Superior, should also be appointed. The services of all other assistants, surveyors, boatmen, &c., should be discontinued.

But above all do we think the system defective for the reason that we

believe it very questionable whether it is authorized by law. As this proceeding in practice has received the sanction of several able statesmen and jurists, we offer our opinion and its consideration with great diffidence; so much so, indeed, that, but for the important consequences to flow from the system, when the great wealth of this country shall have been developed, we would, without examination, have bowed to the opinions of others, and passed this point unnoticed.

Believing the matter, however, as of the importance we do, we cannot, with a sense of duty to ourselves and the government, do so. We have, therefore, given to this question much examination, and will now proceed to state the result of our investigation.

The copper region on Lake Superior is mainly within the bounds of the State of Michigan as fixed by the act of Congress of the 15th June, 1836, providing for the admission of that State into the Union.

After the cession of the western territory by the States to the confederation, an ordinance was passed for ascertaining the mode of disposing of the lands in the ceded territory, which contains the following provision: "There shall be reserved the lot No. 16 of every township for the maintenance of public schools within the said township; also one-third part of all *gold, silver, lead, and copper mines*, to be sold or otherwise disposed of, as Congress shall hereafter direct." (See Public Lands, vol. 1, p. 16.)

It will be observed that, in the reservation here made, the mines are spoken of separately. It must also be observed that the power to dispose of these mines, or either or any of them, is secured, by this fundamental law, to Congress. They are "to be sold or otherwise disposed of, as Congress shall hereinafter direct." We must, therefore, inquire what disposition Congress has made of these mines, *or either* of them?

The first act following this is the ordinance of 1787; this does not contain any thing affecting the question.

Then came the act of 1796, (Public Lands, vol. 1, p. 50.) This directed the surveyors to note all mines, salt springs, &c., and reserved from sale salt springs only.

Next came the act of May 10, 1800. (See Public Lands, vol. 1, p. 70.) This act is silent upon the subject.

The next in order is the act of March 26, 1804, which is also silent.

The next legislation we find is the act of 3d March, 1807, (see Public Lands, vol. 1, p. 156;) the second section of which contains the following provision: "And provided, also, that in all cases where the tract of land applied for includes either a lead mine or salt spring, no permission to work the same shall be granted without the approbation of the President of the United States, who is hereby authorized to cause such mines or springs to be leased for a term not exceeding three years, and on such conditions as he shall think proper."

The authority given here, it will be observed, is confined to *lead mines*, or *salt springs*. But here it ceases. This authority is ample to authorize the leasing of any portion of this territory for the working of any lead mines that may be there found, but it goes no farther. It may be answered, that the agents of the government having reported that lead is found in this region of country establishes the fact, and hence the authority to lease. We grant that the existence of lead gives the President, under this law, the power to lease the land for the purpose of mining the lead ore;

but here Congress have seen proper to arrest him, and there those leases should stop. Now, had the War Department, (which acts as the agent of the President in this matter,) by the terms of the lease, granted permission only to mine the lead, will it be contended for a moment that the holder or lessee would thereby be authorized to mine the gold, silver, and copper ores that were found upon the premises? Most certainly not.

If, then, as must be conceded, the President derives his authority from Congress, he is limited by the terms of his authority. The permission, therefore, given, by the terms of the lease, to mine the copper ore, is without authority, (under this law,) and the grantee takes nothing thereby.

Next came the act of March 3d, 1807, (see Pub. Lands, vol. 1, p. 161,) which provides (see section 5) "that the several lead mines in the Indiana Territory, (then embracing this copper region,) together with as many sections contiguous to each as shall be deemed necessary by the President of the United States, shall be reserved for the future use of the United States; and any grant which may hereafter be made for a tract of land containing a *lead mine* which had been discovered previous to the purchase of such tract from the United States, shall be considered fraudulent and null, and the President of the United States shall be, and he is hereby, authorized to lease any *lead mine* which has been, or may be hereafter, discovered in the Indiana Territory for a term not exceeding five years." The authority given to lease, it will be seen, is expressly confined to lead mines, and in no way varies the question from that just noticed. So far as we can discover, there are no other acts of Congress affecting the inquiry as to the right of the President or any of the departments to grant leases of copper or other mines in this district of country. So much for the special legislation of Congress.

The general legislation of Congress on this subject has also been consulted. It provides that when the Indian title shall have been extinguished, the lands are to be surveyed. To the President is given the discretionary power as to the quantity, and the time when the lands are to be sold, which he is to do by proclamation; and here his authority, so far as to disposing of the public domain, ceases. We look in vain, then, here, for authority to issue leases for working these copper mines.

It remains to inquire, whether or not authority can be found by reason of any treaty stipulation.

The first treaty in order of time, in any way touching the matter in question, is that of 5th August, 1826, between the Chippeway Indians and our government.

The third article of this treaty provides: "The Chippeway tribe grant to the *government of the United States* the right to search for and carry away any metal or minerals from any part of the country. But this grant is not to affect the title of the land nor the jurisdiction over it."

This grant, it will be seen, is to the government of the United States, and not to the President, or any department of government; and clearly requires the action of Congress in the matter, before either department of the government, or any individual, could legally avail themselves of the benefit of the grant.

The only remaining treaty affecting the question to be noticed is that of 1842.

By this treaty the United States acquired the title to the lands, and the country became subject to our general laws. It cannot be pretended that

any authority is given by the terms of this treaty. Indeed, it appears that the terms of the 2d article of this treaty afford additional reason for legislation.

This article provides : " The Indians stipulate for the right of hunting on the ceded territory, with the other usual privilege of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress."

It is presumed that the Indians have not been required to remove by the President ; and if not, Congress alone can authorize any intrusion into the ceded territory ; and this authority must be given before the miner can, without violation of law, enter the country.

We are, then, after all the investigation we have been able to give the subject, forced to the conclusion that the present system of leasing the copper mines of Lake Superior is without authority of law.

Having reported " upon the defects in the system now pursued," we will, as required, proceed " to suggest the best remedy in our opinion for the evils." As indicated, this remedy is alone to be found by a sale of the lands. In the disposition, however, a just per centage should be reserved on all the mineral that may be found on the same. Before sale, the lands should be regularly surveyed as other public lands now are, and sold in tracts as thus surveyed. The purchaser should be left at liberty to work his mine at his own pleasure. This plan removes all the difficulties attendant upon the present system, and at the same time secures to the government the benefits in full of this rich treasure.

In providing for the disposition of this land, the equitable rights or interests of all persons to any portion of the same, acquired under the present system, should be respected and protected, either by extending to them the benefits of the present pre-emption laws, or in some other manner.

Special authority should be given the President to establish a tribunal, clothed with adequate power to settle and adjust these equitable claims.

By a law of Congress approved September 4, 1841, entitled " An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," there was granted to the State of Michigan 500,000 acres of land, to be selected from " any public lands (in the State) except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, and may be made at any time after the lands of the United States, in said States respectively, shall have (been) surveyed according to existing laws."

We are advised that the State of Michigan has not yet completed her selection ; and as it is presumed that Congress did not intend the selection of any of our mineral lands, care should be taken, when the surveys of these lands are completed, that they are not subject to entry under this grant.

As directed, we have received and entertained the claims of many individuals for lands, who have not, as yet, obtained an acknowledgment of their rights from the agents of the government. In many of the cases we heard the parties in person, and by attorney, and have caused to be sworn and examined such witnesses as were willing to appear before us. As we were not clothed with the power to compel the attendance of witnesses or production of papers, or other evidences of claim, we were necessarily

limited in our investigations and examinations to such witnesses and other sources as were voluntarily produced.

Hoping, however, that our investigation may tend to lessen your labors in the settlement of these claims, we have and will continue patiently to ascertain the facts, as far as possible, in each particular case, and report upon the same separately to you as early as practicable.

As directed, we have, also, as far as practicable, inquired into the official conduct of the present and former officers of the agency; and so soon as the testimony upon this subject can be brought to a close, we will report the same to you, together with a statement of such facts as have fallen under our own immediate observation touching the same.

Although not within the particular duties assigned us, we trust we shall be pardoned in calling your attention to the importance of recommending, at an early day, the erection of light houses upon our shore of Lake Superior. The very valuable fisheries of this lake, added to the immense mineral wealth of the country, will very soon produce an amount of commerce upon Lake Superior equal to that of any of our great inland seas, and the government should, without delay, prepare for its protection.

The construction of a ship canal around the falls of Sault de St. Marie has been heretofore recommended in a manner, we think, that cannot fail to arrest the attention of Congress. Permit us to join in recommending this truly great and important work.

DAVID TOD.

WILLIAM BARTLIT.

W. L. MARCY, Esq., *Secretary of War.*

C.

In the matter of the application of Adam W. Spies, presented January 19, 1846.

Applicant presents his permit, dated June 21, 1845, to which is attached his location, duly certified by S. V. Talcott, acting superintendent, dated September 3, 1845; thus making a *prima facie* case for the territory claimed.

The register of locations, with the official statement of S. V. Talcott, esq., may, however, show that the ground here claimed had been previously taken up by one Edwin Moran, of Detroit.

To settle this question, it is only necessary to fix the starting point of a location claimed by one Harmon S. Hay, numbered in the register 311; this location is thus described: "Beginning at the southeast corner of the location made by Dan Ruggles, on the north shore of Portage lake, on the 29th of July, 1844," &c. Ruggles's location, here referred to, was at the time recorded in the same register, and reads thus: "Beginning at a point on the north bank, two miles and three fourths of a mile east of the mouth of Trap Rock river," &c. This beginning place is Ruggles's southeast corner.

Now, upon actual survey, the point "two miles and three-fourths of a mile east of Trap Rock river," is over one mile from the north shore of Portage lake; and if Hay is compelled to start at this point, he does not

interfere with Spies, the applicant; but, on the other hand, if Hay's starting point is upon the northern shore of Lake Portage, then it does conflict.

It is a well settled principle of law, that course and distance must always yield to natural objects. By the enforcement of this rule, the intention of the parties, which alone should be looked to, can best be arrived at. Now, if the description of Ruggles calls for the north shore of this lake, whether it be two and three quarter miles or five miles from Trap Rock river, or whether it be south or southeast of this river, that being a "natural object," will control. His description calls, in the outset, for the "north bank," but does not say of what stream. The concluding part of the description, however, settles this point. It is as follows: "thence along the north shore of *said lake* to the place of beginning."

But, again: Hay, in his description, has called for a point in his starting "upon the north shore of Portage lake."

This evidence, then, in our opinion, establishes the conflict; and, unexplained and unimpeached, would give to Moran, he being the first in point of time, the better claim.

Mr. Talcott, the acting agent, satisfactorily, to our minds, accounts for this error of his without in the least reflecting upon his astuteness and vigilance in the discharge of his official duties.

The applicant, however, attempts to impeach this testimony, and to destroy the validity of Moran's claim by different means, which we will now consider.

He first more than insinuates that the words, viz: "on the north shore of Portage lake," which are interlined in the record, were improperly placed there, and formed no part of the description as originally made and recorded. To arrive at the facts on this point, we called upon Mr. Norvell, a young gentleman who at that time had charge of the record, to state any fact within his knowledge touching the matter. His statement (in writing) shows clearly that there is not the slightest foundation for the suspicion of the claimants.

The applicant then attempts to show that this man Moran is a mere tool in the hands of Lieutenant Ruggles, and has, in fact, no interest in the location; and if the testimony which he produces is to be relied upon, he most clearly establishes the fact.

From this testimony, it would seem that Ruggles had applied for a location of three miles square in the year 1844, and that a record of his application had been made upon the register; that learning, in the spring of 1845, that the War Department would not issue leases to any officer in the army, he set his genius to work to evade this salutary order of the department; that, among other means resorted to by him, was that of buying or borrowing the names of others; that this man Edward Moran visited the copper country as one of the surveying party under the lamented Houghton, and no sooner put his foot on shore than he was hunted down by Ruggles, (a lieutenant in the army,) and, upon some terms, gave him his name, and that Ruggles gave him no further trouble in the matter. A proceeding like this should not receive the countenance of the department.

The difficulty, however, with us, is, to settle in our own minds upon the degree of credit to be given to all this *ex parte* evidence. It is all taken behind the back of the party, and we are passing upon interests that

may involve all that the party may possess on earth, without giving him an opportunity to be heard.

We have not the power to compel the production of evidence. The adverse party is not within our control, and, therefore, we are compelled to report upon the case as presented to us. The case itself shows the necessity—being one of a vast number that have and will arise—of the establishment of a board by the government, with power to investigate and determine these conflicting claims.

We cannot, therefore, recommend to the department the issuing of a lease, at this time, to the applicants. The adversary party should be at least notified, that he may have the opportunity to be heard. The evidence upon which we have based our conclusions is herewith sent you.

Yours, &c.,

WM. BARTLIT.
DAVID TOD.

To. WILLIAM L. MARCY, Esq.,
Secretary of War.

F.

SUPREME COURT OF THE UNITED STATES.—*January Term, 1845.*

The United States }
vs. }
Hezekiah H. Gear }

Mr. Justice Wayne delivered the opinion of the court.

"From the foregoing statement of all the acts of Congress having any bearing on the subject before us, we think it obvious it was not intended to subject lead mine lands in the districts made by the act of 26th June, 1834, to sale as other public lands are sold, or to make them liable to a pre-emption by settlers.

"The argument in support of a contrary conclusion is, that the reservations in the fourth section of that act, with the authority given to the President to sell all the lands in the districts, any law of Congress heretofore existing to the contrary notwithstanding, exclude lead mine tracts in those districts from the operation of the act of 3d March, 1807. At most, the language of the fourth section of the act of 1834 imparts only an authority to the President to sell, given in the same way as it has been conferred upon him in other acts providing for the sale of the public lands. Then the question occurs, whether the section of an act, in general terms to sell, (certain reservations excepted) without any reference to a previous act, which declares that lead mines in the Indiana Territory shall be reserved for the future disposal of the United States, is so far a repeal of the latter that lead mine lands in a part of that Territory are subjected to sale as other public lands are. Why should Congress, without certain words showing an intention to depart from the policy which had governed its legislation in respect to lead mine lands in the whole of Indiana Territory, from 1807 to 1834, be supposed to have meant to exempt a portion of the lead mine lands in that Territory from that policy, in an act the whole purview of which was to create additional land sale districts? Be-

sides, the reservations in the fourth section of the act of 1834, except the tract for the village of Galena, are no more than the re-affirmance of some of the provisions of other statutes respecting reservations made or to be made out of the public lands in other districts, and cannot, therefore, be considered as an enumeration in connexion with the general power to sell all lands, any law of Congress heretofore existing to the contrary notwithstanding repealing another act, providing for a reservation of a particular class of lands within the same land district to which the act of 1834 applies. The reservations in the fourth section of the act of 1834 are limitations upon the authority to sell, and not an enlargement of the general power of the President to sell lands which, by law, he never had a power to sell, which have always been prohibited by law from being sold, and which never have been sold, except under authority of a special statute, such as that of the 3d March, 1829, (1 Land Laws, page 457,) which authorized the President to cause the reserved lead mines in the State of Missouri to be sold. In looking at that act, no one can fail to observe the care taken by the government to preserve its property in the lead mine lands, or to come to the conclusion that the reservations of them can only be released by special legislation upon the subject matter of such reservations. Authority, then, to sell all lands in the districts made by the act of 1834, though coupled with the concluding words of the fourth section, can only mean all lands prohibited by law from being sold, or which have been reserved from sale, by force of law. The propriety of this interpretation of that section is more manifest when it is considered, if a contrary interpretation is given, that the lead mine lands in one district of the same Territory would be liable to sale and pre-emption, and those in another part of it would not be. Can any one possible reason be suggested to sustain even the slightest intention upon the part of Congress, when it was passing the act of 1834, to make such differences in respect to lands within the same locality as have just been mentioned? Could Congress have meant to say, under a power to sell, that it would be lawful to sell in the new land district what it was unlawful to sell in other land districts of the same Territory, of which the new land district was also a part? and that settlers upon the public lands within the new district should have a right of pre-emption in lead mine tracts, which settlers upon other lands within the same Territory, but not within the new land district, could not have? The mere fact of a new land district having been made out of a part of the Territory in which the lead mine lands had been reserved, with the authority of the President to sell all lands in the new district, can have no effect to lessen the force of the original reservation. In truth, the acts of 1834 and 1807 do not present a case of conflict in the sense in which statutes do, when, from some expression in a later act, it may seem that something was intended to be excepted from the force of the former, or to operate as a partial repeal of it. The rule is, that a perpetual statute, (which all statutes are, unless limited to a particular time,) until repealed by an act professing to repeal it, or by a clause or section of another act directly bearing in terms upon the particular matter of the first act, notwithstanding an implication to the contrary may be raised by a general law, which embraces the subject matter, is considered still to be the law in force as to the particulars of the subject matter legislated upon. Thus in this case, all lands within the district mean lands in which there are, and in which there are not, minerals or lead mines; but a power to

sell all lands, given in a law subsequent to another law expressly reserving lead mine lands from sale, cannot be said to be a power to sell the reserved lands when they are not named, or to repeal the reservation. In this case there are two acts before us, in no way connected, except in both being parts of the public land system. Both can be acted upon without any interference of the provisions of the last with those of the first; each performing its distinct functions within the sphere, as Congress designed they should do. But further, that the act of 1834 was not intended as a repeal of the act of 1807, in regard to lead mines, so as to grant a right of pre-emption in them to settlers, is manifest from the fact that an act was passed only seven days before it, reviving an act to grant pre-emption rights to settlers on the public lands, which excludes settlers from the right of pre-emption in any land reserved from sale by act of Congress; thus re-asserting then what had been uniformly a part of every pre-emption law before, and what has been a limitation upon the right of pre-emption in every act for that purpose since.

"We do not think it necessary to pursue the subject further, except to say that the view we have taken of the act of 1834, in respect to lands containing lead mines and the right of pre-emption in them, is coincident with the opinion given by this court in the case of *Wilcox vs. Jackson*, 13 Peters, 513. That case was well and most carefully considered, and expressed in the deliberate language of this court. We determined then, the point being directly in the cause, that the act of 1834 had relation to a sale of lands in the manner prescribed by law, at public auction, and that a right of pre-emption was governed by other laws. The court said: 'The very act of June 19, 1834, under which this claim is made, was passed but one week before the one of which we are now speaking, (meaning the act of June 26, 1834;) thus showing that the provisions of the one were not intended to have any effect upon the subject matter on which the other operated.' We see no reason to change what was then the view of the court. On the contrary, there is much in this case to confirm it. Let it be certified, therefore, to the judges of the circuit court of the United States for the district of Illinois, that this court is of the opinion that the act of Congress entitled 'An act to create additional land districts in the States of Illinois and Missouri, and in the territory north of the State of Illinois,' approved June 26, 1834, *does not require* the President of the United States to cause to be offered for sale the public lands *containing lead mines*, situated in the land districts created by said act. 2d. That the said act does not require the President to cause said lands, containing lead mines, to be sold, because the fifth section of the act of March 3, 1807, entitled 'An act making provision for the disposal of the public lands situated between the United States military tract and the Connecticut reserve, and for other purposes,' is still in force.

"To the 3d question we reply, that the lands containing lead mines in the Indiana Territory, or in that part of it made into new land districts by the act of June 26, 1834, are not subject, under any of the pre-emption laws which have been passed by Congress, to a pre-emption by settlers upon the public lands.

"To the 4th question we reply, that the fourth section of the act of 1834 does in no way repeal any part of the fifth section of the act of March 3, 1807, by which the lands containing lead mines were reserved for the future disposal of the United States, by which *grants* for lead-mine tracts,

discovered to be such before they may be bought from the United States, are declared to be fraudulent and null; and which authorized the President to lease any lead mine which had been, or might be, discovered in the Indiana Territory, for a term not exceeding five years.

"To the 5th question we reply, that the land containing lead mines in the districts made by the act of 1834 are not subject to pre-emption and sale under any of the existing laws of Congress.

"The foregoing answers apply, also, to the points upon which the judges were divided in opinion, upon the bill in chancery between the United States and the defendant Gear, except the fourth question certified in that case; and to that we reply, that the digging lead ore from the lead mines upon the public lands in the United States is such a waste as entitles the United States to a writ of injunction to restrain it."

G.

Be it known, That there is hereby granted to

full permission, for the term of one year from the date of these presents, to examine and dig for lead and other ores, on any part of the lands known as the Mineral District, in the region of country lying south of Lake Superior, which was acquired by the United States from the Chippewa Indians by the treaty with them of 4th of October, 1842, and ratified on the tenth day of February, 1843; provided that such examination and diggings shall not be made on any tract which may have been selected by any other person, or company of persons, acting under the authority of the Secretary of War, or of the United States agent for said mineral lands; and that this permit is not to be construed as authorizing any selection of lands on Isle Royale, or south of the headwaters of the streams which empty into said lake.

And if the said shall, at any time within the year above mentioned, select a portion or tract of land in said district, which he desires to occupy for mining purposes, which portion must be of a square form, of four equal sides of not exceeding one mile each, bounded by due east and west, and north and south lines, in all cases where the boundary is not determined by said lake or some other sheet of water, or by some other location previously made; and shall, at the time of making such selection, mark the corners thereof, and leave a person in charge so as to point out the selection to other persons seeking to make selections, and shall transmit to the Secretary of War, within said year, a description of the tract so selected, accompanied by a plat of survey of the same, exhibiting the courses and lengths of the exterior lines, together with the name and general course of any river, stream, or other water running through, lying within, or bounding the same, together with the bearing and distance of the point of beginning of such survey from some well known or easily identified natural permanent object; and shall, moreover, keep a true and faithful account of all the ores of every description which he shall dig, or allow to be dug, on any portion of said tract from the time of selecting the same to the time of execution of a

lease as hereinafter mentioned ; and which description shall moreover be accompanied by a certificate of the United States agent aforesaid, that such selection does not interfere with any other location made under proper authority ; then, in such case, a lease will be granted under the seal of the War Department to the said

for the tract so described, for the term of three years, upon his tendering a satisfactory bond in a sum not less than *three* thousand dollars, conditioned for the faithful performance of the conditions of such lease.

And the lease so to be granted will stipulate that the United States as party of the first part may, at any time during the continuance of the lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy ; provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And that the party of the second part shall have full right, during the continuance of the lease, to dig and take from any part of the lands so leased which are not occupied for military purposes or as a mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works, as may be necessary for the accommodation of themselves, their agents, and workmen, and for the raising of the ores, and extracting metals therefrom ; and for these purposes alone may use all such timber, stone, fire-wood and other fuel as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes or for a mineral agency. And that said party of the second part will commit no waste, nor suffer it to be committed, and that at the termination of the lease the said tenant, or tenants, shall have no claim upon the government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And in the lease so to be granted, the said party of the second part for himself, his heirs, representatives, and assigns, will covenant, promise, and agree that the mines, lodes, and deposits of ore discovered, or which may be discovered on the land so leased, shall be worked with due diligence and skill ; it being fully understood that the motive for granting the lease is that these lands shall be worked for mining purposes, and are not to be held as farming lands ; and that all the ores or mineral dug on any part of the land so leased, either by them or others under their permission, shall be smelted within said district of country acquired by the treaty aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission in each instance from the party of the first part ; that they will keep, or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants and assistants, and by each person or company of persons whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all metals extracted from said ores or mineral ; and that they will moreover make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that par-

ty; which returns shall show the quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath in due form of law, if required by the party of the first part. And further, that any superintendent or other agent, acting under the authority of the party of the first part, may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said land; and that the book or books, hereinbefore mentioned, shall be at all times open to his inspection.

And the said party of the second part for himself, his heirs, representatives and assigns, will further covenant, promise, and agree to pay, or cause to be paid, semi-annually, (or oftener if required,) as rent to the United States, for the use of the lands so leased, and deliver the same, free of cost, at Fort Brady on the Sault St. Marie, at Copper Harbor on Point Keweenaw, at the Ontonagon river, at the La Pointe agency, or other place on the southern shore of Lake Superior, as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased, and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them, by the last refining process to which it may be subjected in said mineral district, and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or sale in market. And further, that they will keep a true account and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in the lease, that then, in such case, they shall deliver, or cause it to be delivered, to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And the lease so to be granted will further stipulate that, within three months after the expiration of the three years for which the lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract, and surrender peaceable possession of the same, unless they shall, within said three months, obtain a renewal of said lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives, or assigns, to conform to, and carry into effect any of the promises and agreements above stipulated to be performed by said party of the second part, that the lease

shall be void and forfeited, and that said party of the first part may re-enter, take possession of, and lease the above mentioned tract, or any part thereof, to others. And that upon written notice being served by any authorized agent of the party of the first part, setting forth that said lease is deemed to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives, or assigns, or left on said tract in default of any such person being present, the said party of the second part will, within three months, remove from said tract, and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War, or other officer acting under the authority of said party of the first part, to remit the forfeiture, and to grant them written permission to remain.

And at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the party of the second part shall have fully complied with the conditions set forth in such lease, and shall tender a satisfactory bond in a sum not less than *three* thousand dollars conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of such lease for the further term of three years, upon the same terms and conditions, except that, for such second term of three years, the rent stipulated to be paid shall be ten per cent. of the metal extracted. And at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years upon furnishing in same manner a like new bond for the performance of that lease.

Given at Washington, this * * * day of * * *
in the year of our Lord one thousand eight hundred and forty- * *

Secretary of War.

By virtue of the authority given to me by the foregoing permit, I have selected a tract for the purpose of mining thereon, of which tract the following is a true description: Beginning at * *

* * * and pray that a lease may be granted for the same.

Dated at * * * this * * * 184 .

I have carefully examined the description of the tract above applied for, and find that it does not interfere with any other location made under proper authority, and I recommend that a lease be granted as prayed for.

Dated at * * * this * * * 184 .

H.

This indenture, made in duplicate, and entered into this * * * day of * * * in the year of our Lord one thousand eight hundred and forty- * * * between the United States of America, acting herein by * * * Secretary of War, of the first part, and * * * of * * * in the State of * * * of the second part, witnesseth :

That the said party of the first part, for and in consideration of the rents, covenants, and agreements, hereinafter mentioned, doth by these presents, and by and with the approbation of the President of the United States, grant, lease, and farm, unto the said party of the second part, his heirs, representatives, and assigns, (they being citizens of the United States,) for the full term of three years from the date hereof, a certain tract of land, for the purpose of mining for lead and other ores which may be found thereon, which tract of land hereby leased is situate within the region of country on the southern shore of Lake Superior, and is described as follows, viz :

To have and to hold the same for the term aforesaid, unto the said party of the second part, his heirs, representatives, and assigns, upon the following conditions, viz : That the said party of the first part may, at any time during the continuance of this lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy ; provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And the said party of the second part shall have full right, during the continuance of this lease, to dig and take from any part of the lands hereby leased which are not occupied for military purposes or as a mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works, as may be necessary for the accommodation of themselves, their agents, and workmen, and for the raising of the ores, and extracting metals therefrom ; and for these purposes alone may use all such timber, stone, fire-wood, and other fuel, as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes or for a mineral agency. And the said party of the second part covenants that he will commit no waste, nor suffer it to be committed, and that at the termination of this lease the said tenant or tenants shall have no claim upon the government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And the said party of the second part for himself, his heirs, representatives, and assigns, hereby covenants, promises and agrees that the mines, lodes, and deposits of ore discovered or which may be discovered on the land hereby leased, shall be worked with due diligence and skill : it being

fully understood that the motive for granting this lease is, that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores or mineral dug on any part of the land so leased, either by himself or others under his permission, shall be smelted within the district of country aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission from the party of the first part; and that they will keep or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants and assistants, and by each person or company of persons whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all metals extracted from said ores or mineral; and that they will moreover make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath in due form of law, if required by the party of the first part. And further, that any superintendent or other agent acting under the authority of the party of the first part, may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said land; and that the book or books hereinbefore mentioned shall be at all times open to his inspection.

And the said party of the second part for himself, his heirs, representatives and assigns, hereby further covenants, promises, and agrees to pay or cause to be paid semi-annually, (or oftener if required,) as rent to the United States, for the use of the lands so leased, and deliver the same, free of cost, at Fort Brady on the Sault St. Marie, at Copper Harbor on Point Keweenaw, at the Ontonagon river, at the La Pointe agency, or at such other place on the southern shore of Lake Superior as may be from time to time determined upon by the party of the first part, and to such person as may be appointed, to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased, and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them, by the last refining process to which it may be subjected in said district, and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or for sale in market. And further, that they will keep a true account and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every

one hundred pounds of all the metal so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in this lease, that then, in such case, they shall deliver or cause it to be delivered to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And it is fully understood and agreed between the parties to this lease, that within three months after the expiration of the three years for which this lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract, and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of this lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives, or assigns to conform to, and carry into effect any of the promises and agreements above stipulated to be performed by said party of the second part, that this lease shall be void and forfeited, and that said party of the first part may re-enter, take possession of, and lease the above mentioned tract, or any part thereof, to others. And it is further understood that upon written notice being served by any authorized agent of the party of the first part, setting forth that this lease is deemed to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives or assigns, or left on said tract in default of any such person being present, the said party of the second part hereby covenants, promises, and agrees for himself, his heirs, representatives and assigns, that they will, within three months, remove from said tract, and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War or other officer acting under the authority of said party of the first part to remit the forfeiture, and to grant them written permission to remain.

And the said party of the first part hereby stipulates and agrees, that at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the said party of the second part or their assigns shall have fully complied with the conditions on their part, set forth in this lease, and shall tender a satisfactory bond in a sum not less than * * * * thousand dollars conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of this lease for the further term of three years, upon the same terms and conditions, except that for such second term of three years the rent stipulated to be paid shall be ten per cent. of the metal extracted. And at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years, upon furnishing in same manner a like new bond for the performance of that lease.

In witness whereof, the said Secretary of War, acting for the party of

the first part as aforesaid, hath hereunto set his hand, and caused the seal of the War Department to be affixed, and the parties of the second part have set their hands and seals, the day and year first above written.

Signed and sealed by * * * * .

In presence of * * * * .

[*Entered at the Ordnance Office as lease No. * * * .*]

